

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based upon the tangible personal property transferred incident to sales of service. See 35 ILCS 115/3. (This is a GIL).

August 6, 2004

Dear Xxxxx:

This letter is in response to your letter dated September 23, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am requesting a ruling regarding sales tax reporting on behalf of a client of ours.

My client designs a brochure. They then subcontract with a printer to print the brochure. They then sell the brochure to the end user for use at a trade show to promote a product.

Here is what has happened the first time. The printer charged my client \$1,447.34 for the subcontract work, including \$17.84 sales tax. My client sold the product to the end user for \$10,000.00. My client, at this time, is not registered with the State of Illinois for sales tax purposes.

Please tell me exactly what my client should be doing if what I have outlined in the above paragraph is incorrect. If what is currently being done is correct please confirm this to us.

If the subcontracted printing work was done outside the United States and the product shipped to my client would this change anything?

My client desires to comply with the law regarding the proper handling of sales tax. Thank you for your assistance.

For general information purposes the Illinois sales and use tax system is unique because it codifies four separate taxes: The Retailers' Occupation Tax, (86 Ill. Adm. Code 130.101 et al.), the Use Tax, (86 Ill. Adm. Code 150.101 et al.), the Service Occupation Tax, (86 Ill. Adm. Code 140.101 et al.), and the Service Use Tax, (86 Ill. Adm. Code 160.101 et al.).

The Retailers' Occupation Tax is what is commonly referred to in other locales as "sales" tax. However, the Retailers' Occupation Tax is not a sales tax, but rather an occupation tax. The Retailers' Occupation Tax is imposed on persons engaged in the business of selling tangible personal property at retail. The complement of the Retailers' Occupation Tax is the Use Tax, which is essentially a privilege tax imposed upon the privilege of using, in Illinois, tangible personal property purchased anywhere at retail.

The Service Occupation Tax is also an occupation tax, and has a complementary privilege tax known as the Service Use Tax. These service taxes are applicable to tangible personal property transferred by a servicemen as an incident to the service provided, as opposed to property being sold and purchased at retail. The tax is not on the service itself, but on the property being transferred.

When your client produces and sells custom printed materials, it appears to be engaged in special order printing. Under Illinois tax law, the transfer of special order printing materials is a service transaction that may result in either Service Tax or Use Tax liability for the special order printer. For your general information see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax. A serviceman's liability may be calculated in one of four ways: 1) separately stated selling price of tangible personal property transferred incident to service; 2) 50% of the serviceman's entire bill; 3) Service Occupation Tax on the serviceman's cost price if he is a registered de minimis serviceman; or, 4) Use Tax on the serviceman's cost price if he is a de minimis serviceman not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale price of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106. These methods result in the customer incurring a Service Use Tax liability. See 86 Ill. Adm. Code 169.101.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. This method also results in the customer incurring a Service Use Tax liability.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108. Under this method the customer incurs no Service Tax liability.

If your client is making sales of service in Illinois, he will incur tax as outlined above. Most special order printers remit Use Tax to their suppliers on the cost price of the tangible personal property transferred incident to their sales of service. These servicemen are considered the end users of the tangible personal property transferred to service customers, and therefore have no legal authority to collect tax from their customers. See 86 Ill. Adm. Code 140.101 through 140.109.

If your client was a "de minimis" serviceman (See Section 140.108) and not otherwise required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax, your client could handle its tax liability as provided in Section 2 (g) of the Service Occupation Tax. Section 2 (g) states that " the purchase of such tangible personal property (i.e. the tangible personal property the serviceman transfers to the service customer) by the serviceman shall be subject to tax under the Retailers' Occupation Tax Act and the Use Tax Act." See 35 ILCS 115/2 (g).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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